Supreme Court, U.S.
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No. 02-65

IN THE

# Supreme Court of the United States

GREEN SPRING HEALTH SERVICES, INC., *et al.*,

*Petitioners,*

*v.*

PENNSYLVANIA PSYCHIATRIC SOCIETY,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## BRIEF IN OPPOSITION

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## RULE 29.6 STATEMENT

Respondent Pennsylvania Psychiatric Society is a Pennsylvania non-profit corporation. No publicly held company holds more than 10% of its stock.

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## INTRODUCTION

Challenging only a portion of the Third Circuit's ruling below, Petitioners make two arguments why the single issue they raise warrants review. First, Petitioners simply reargue the standing argument that the Third Circuit rejected below. Petitioners have had to acknowledge that there is no split among the circuits because the courts of appeals that have considered the third-party standing issue raised here agree with the Third Circuit. Petitioners' bare assertion of error by the court below is neither a compelling nor an appropriate basis upon which to seek this Court's review.

Perhaps aware of the weakness of their first argument, Petitioners go beyond what they presented below and attempt to create an issue here of constitutional stature. They assert that the complaint filed by Respondent Pennsylvania Psychiatric Society ("PPS") challenges core practices of managed care and attempts to legislate reform, not adjudicate a resolution of an active dispute. This argument mischaracterizes the fundamental nature of PPS' claims which, in the context of Fed. R. Civ. P. 12, is defined by the Amended Complaint. The gravamen of this litigation is Petitioners' misrepresentation and breach of their contractual commitments to physicians with whom they have Provider Agreements and the resulting injury to the physicians' patients. PPS is not seeking to legislate new managed care practices, but only to require Petitioners to implement managed care policies in a manner consistent with their agreements and applicable law. Because Petitioners' newly-minted second argument is based upon claims not asserted here, it also fails as a rationale for Supreme Court review.

The Petition should therefore be denied because neither of Petitioners' arguments warrant the Court's consideration.

## COUNTERSTATEMENT OF THE CASE

PPS brought this action to address Petitioners' systematic practice of refusing to authorize, and otherwise restricting, medically necessary and appropriate mental and behavioral health care, in violation of Pennsylvania law, NCQA ("National Committee for Quality Assurance") accreditation standards, and defendant Green Spring's Provider Agreements with PPS-member psychiatrists, and misrepresenting the quality of care provided to subscribers of Petitioners' health plans. Amended Complaint, Introduction. Respondent's Appendix ("Resp. App.") at 1a-2a. Petitioner-defendants are managed care organizations ("MCOs") doing business in the Commonwealth of Pennsylvania. *Id.* at 3a-5a. Green Spring and Magellan supply behavioral health and substance abuse services, as well as credential physicians to provide such services, under contract to managed care organizations. *Id.* at 3a. They are alleged to participate in the administrative processes and procedures at issue in this lawsuit. *Id.* at 6a-7a.

Highmark is a non-profit corporation that operates a health service plan, and engages in the administrative processes and procedures at issue in this lawsuit, including credentialing of physicians to Green Spring's Provider Network, determining the quality and level of care provided by PPS-member psychiatrists and reimbursement of physicians for services provided. *Id.* at 4a. The Keystone defendants, Keystone Health Plan West, Keystone Health Plan Central, and Keystone Health Plan East, are Pennsylvania health maintenance organizations that operate the managed care plans at issue in this lawsuit. *Id.* at 4a-5a. Highmark is the parent company, and principal, of Keystone Health Plan West. *Id.* at 4a-5a.

The Keystone defendants contract with Green Spring to obtain mental and behavioral health and substance abuse services. *Id.* at 7a. Green Spring, in turn, contracts with psychiatrists (the "Provider Agreement") and other behavioral health care providers to form the "Provider Network" that actually renders treatment to Subscribers of the managed care plans. *Id.* at 9a. Among other things, the Provider Agreement requires PPS-member psychiatrists to furnish medically necessary and appropriate services within the applicable standard of care, and guarantees that Green Spring's policies and procedures will not interfere with their ability to do so. *Id.*

Petitioners represent that certain levels of care will be available under their managed care plans, and that decisions to deny care can be freely appealed. *Id.* at 13a. In reality, however, they routinely and systematically violate contractual, common-law and statutory obligations to authorize PPS-member psychiatrists to provide medically necessary substance abuse and behavioral and mental health services. *Id.* at 14a. Such violations interfere with PPS-member psychiatrists' ability to practice psychiatry within the applicable standard of care, and directly jeopardize the mental health and welfare of their patients. *Id.* at 11a.

Petitioners' abusive administrative policies and procedures have endangered suicidal patient-subscribers by denying or delaying vital in-patient care, and have caused needless suffering to other subscribers by denying them access to medically necessary and appropriate health services. *Id.* at 25a-27a. In addition, PPS-member psychiatrists have suffered financial and professional detriment as a result of Green Spring's and the other Petitioners' practices designed to restrict their ability to provide medically necessary and

appropriate treatment. *Id.* at 14a-27a. PPS, accordingly, brought this lawsuit, asserting breach of contract and state law tort claims on behalf of its member physicians as well as their patients, seeking equitable relief from defendants' improper policies, procedures and practices. PPS' Amended Complaint states eight Counts, the first six on behalf of PPS' members, *id.* at 30a-42a and the last two on behalf of both PPS' members and their patients. *Id.* at 42a-45a.

The district court dismissed all of PPS' claims on the basis that the Society lacked standing to represent its members and, *a fortiorari*, its members' patients. Alternatively, the district court held that PPS' claims were subject to arbitration under the Provider Agreements. The Third Circuit reversed the district court's finding that PPS lacked standing as to both PPS' members and their patients, and remanded for further proceedings consistent with its opinion. *Pennsylvania Psychiatric Society v. Green Spring Health Services, Inc., et al.*, 280 F.3d 278 (3d Cir. 2002), Petitioners' Appendix ("Pet. App.") at 23a. Petitioners' petition for rehearing and rehearing en banc was denied. Pet. App. at 44a.

Before the Third Circuit, Petitioners Highmark and the Keystone Defendants argued that PPS lacked both associational and third-party standing, that its claims fell under a mandatory arbitration provision or a grievance procedure, and that all of PPS' claims were preempted by ERISA. Their standing arguments were principally prudential, not constitutional. Similarly, Petitioners Green Spring and Magellan argued that PPS lacked associational standing due to the need for individual participation of its members, that PPS failed to meet the requirements for third-party standing, that the claims are subject to mandatory

arbitration or grievance procedures, that PPS failed to state any claims for failure to credential or re-credential physicians, and that PPS' claims were preempted by ERISA.

Petitioners' standing arguments were rejected by the Third Circuit with the full panel agreeing that the district court had erred in dismissing PPS' claims asserted on behalf of its members. Review of that determination is not being sought before this Court. The majority also reversed the district court's dismissal of PPS' members' patients' claims, addressing in response to Petitioners' arguments only the prudential standing issues, and not the separation of powers argument Petitioners attempt to make here.

## REASONS FOR DENYING THE WRIT

### I. Petitioners' Attempt To Reargue Standing Does Not Merit Review

Petitioners' first argument, while carefully couched in terms of a "conflict," is no more than reargument of the standing issues they lost before the Third Circuit. Pet. at 9-18. While Petitioners insist that the Third Circuit's decision below implicates concerns of constitutional stature, the preliminary nature of this fact-bound matter, the absence of any conflict among the courts of appeals that have addressed the issue, and the fact that the Third Circuit's resolution of the issue is entirely consistent with this Court's standing jurisprudence confirm that Petitioners simply object to the result. An asserted challenge to an appellate court's application of established law is neither a compelling nor appropriate basis upon which to seek this Court's review. *See* Supreme Court Rule 10.

### A. Review Is Premature At This Early Stage Of A Fact-Bound Case

This matter is still at a preliminary stage, with all proceedings having occurred on Petitioners' Rule 12 motions. The only operative facts are those alleged in PPS' Amended Complaint which must be deemed to be true. *Albright v. Oliver*, 510 U.S. 266, 268 (1994); Pet. App. at 11a. All inferences must be drawn in favor of the nonmoving party. *H.J. Inc v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 249 (1989). "[W]hen standing is challenged on the basis of the pleadings, we 'accept as true all material allegations of the complaint, and . . . construe the complaint in favor of the complaining party.'" *Pennell v. City of San Jose*, 485 U.S. 1, 7 (1988) (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)).

The Third Circuit recognized the prematurity of the lower court's dismissal, stating that "the society's suit should not be dismissed before it is given the opportunity to establish the alleged violations without significant individual participation . . . ," and so "should be allowed to move forward with its claims within the boundaries of associational standing." Pet. App. at 11a. The court therefore reversed and remanded so that PPS might factually establish its standing and prove its claims.

As PPS conceded at argument, *id.*, there exists a possibility that it will not be able to demonstrate that Petitioners' systemic practices will support PPS' claims without the need for its individual members' participation. Should that possibility materialize, PPS will likely lose its right to represent its members in this lawsuit. Because PPS' standing to represent its members' *patients* — the only issue

raised here — relies on PPS' associational standing to represent its members, the issue presented here could become moot. Where the underlying factual development could obviate the need to resolve the issue as presented, certiorari is not appropriate. *Board of License Commissioners of the Town of Town of Tivertown v. Pastore*, 469 U.S. 238, 240 (1985) (dismissing writ of certiorari as moot, "[s]uch speculative contingencies afford no basis for our passing on the substantive issues [the petitioner] would have us decide."), *quoting DeFunis v. Odegaard*, 416 U.S. 312, 320 n.5 (1974).

**B. There Is No Split Of Authority**

Petitioners openly concede, Pet. at 22-23, that their position is contrary to the uniform rulings of other courts of appeals to consider this issue. These courts have similarly held that an entity rightfully asserting organizational standing has the same standing to sue on behalf of third parties that its members would otherwise enjoy. In *Fraternal Order of Police v. United States*, 152 F.3d 998 (D.C. Cir. 1998), *cert. denied*, 528 U.S. 928 (1999), the Fraternal Order of Police sued to dispute the constitutionality of federal legislation that prohibited the supply of firearms to police officers convicted of domestic violence. Because chief law enforcement officers would be liable for supplying a firearm to a subordinate convicted of domestic violence, and because failure to supply a firearm would violate the subordinate's rights, the court found the chiefs had third-party standing to raise their subordinate's claims. *Id.*, 152 F.3d at 1001-1002. The "presence of [chief officers] as members," although not parties to the litigation, "[gave] the Order standing to make these claims as well." *Id.*, 152 F.3d at 1002.

In *Ohio Association of Independent Schools v. Goff*, 92 F.3d 419, 422 (6th Cir. 1996), *cert. denied*, 520 U.S. 1104 (1997), the court affirmed the derivative standing of a school association in a suit challenging a statute providing for the revocation of private school charters for failure to administer the same proficiency test as public high schools. Reasoning that the association had associational standing to raise the claims of its member schools, who in turn had third-party standing to raise the constitutional rights of parents to direct their children's education, the court held that the association had standing to raise the parents' claims. Likewise, in *Public Citizen v. Federal Trade Commission*, 869 F.2d 1541 (D.C. Cir. 1989), the court affirmed the standing of Public Citizen and other organizations to challenge exemptions to the health-warning requirements of the Smokeless Tobacco Act. Since the associations had standing to raise the claims of their members, and those members who were parents had standing to raise the claims of their children who would not receive the necessary health-warnings, the court held that the associations had "derivative authority to pursue actions on the parents' behalf." *Id.*, 869 F.2d at 1550.

The Third Circuit considered these opinions in light of this Court's standing jurisprudence. Pet. App. at 18a-21a. Contrary to Petitioners' apocalyptic suggestions, the Third Circuit merely "decline[d] to adopt a per se rule barring such derivative claims," Pet. App. at 18a; it did not create an exception that swallows the rule. The D.C. Circuit handed down its opinion in *Public Citizen* in 1989. Since then, the sky has not fallen, nor have the floodgates opened. Four consistent decisions in thirteen years do not demonstrate a "recurring," Pet. at 23, question justifying review.

### C. The Third Circuit's Decision Is A Correct Application Of Existing Standing Principles.

The unanimous conclusions of these four courts of appeals regarding organizational and third-party standing is, not surprisingly, consistent with this Court's standing jurisprudence. Associational standing was recognized in *Warth v. Seldin*:

> Even in the absence of injury to itself, an association may have standing solely as the representative of its members. . . . The association must allege that its members, or any one of them, are suffering immediate or threatened injury . . . of the sort that would make out a justiciable case had the members themselves brought suit. . . . So long as this can be established . . . the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction.

422 U.S. 490, 511 (1975). In *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977), the Court held that an association acquires the standing of those whose interests it represents when:

> (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

*Id.* at 343.

The Third Circuit found that these three factors were all satisfied here. Pet. App. at 6a-11a. Nothing in any of this Court's associational standing decisions supports Petitioners' claim that — even though all of the *Hunt* factors are present — an organization's standing should nevertheless be less than the standing of the individuals on whose behalf it has filed suit. Instead, in *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 9-10 (1988), this Court specifically endorsed the "stacking" or representative standing challenged by Petitioners.

In *New York Club*, the plaintiff was an association of associations seeking to assert the First Amendment rights of the members of its members. *Id.* at 8-9. The defendant challenged the plaintiff's standing based upon the "in their own right" language of the first prong of the *Hunt* test and argued that the plaintiff could not avail itself of two levels of representative standing. 487 U.S. at 9. The Court rejected this argument, holding that once associational standing was established under *Hunt*, the plaintiff had the same standing as its members, including any standing those members had to represent the rights of others:

> [Defendant's] reading of *Hunt* is incorrect. Under *Hunt*, an association has standing to sue on behalf of its members when those members would have standing to bring the same suit. It does not matter what specific analysis is necessary to determine that the members could bring the same suit.

487 U.S. at 9. The Court in *New York Club* thus allowed what Petitioners here refer to as "stacking," Pet. at 2-3, the simultaneous assertion of two levels of representational standing:

> In this regard, it is sufficient to note that appellant's member associations would have standing to bring this same suit on behalf of their own individual members. . . . Thus this case is properly before us.

487 U.S. at 9-10, *citing Warth*, 422 U.S. at 511.

The only distinction between *New York Club* and this case is the particular type of representational standing at issue. In *New York Club* two levels of associational standing were permitted, whereas here the Third Circuit allowed one level of associational standing and one level of third-party standing. This is a distinction without a difference.

Associational and third-party standing are merely different "strands" of the "doctrine of representational standing," a doctrine that "rests on the premise that in certain circumstances, particular relationships are sufficient to rebut the background presumption that litigants may not assert the rights of absent third parties." *United Food and Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 557 (1996) (parentheticals omitted). Since the Court already determined, in *New York Club*, that a second level of representational standing is permissible, the minor permutation here in types of representational standing is not worthy of this Court's review — the "specific analysis" that the Court in *New York Club* held did "not matter." 487 U.S. at 9

Under *New York Club*, the only remaining issue is whether PPS's member psychiatrists have standing to assert claims on behalf of their patients that their patients' health care is being compromised by the defendants. This is not a

matter in serious dispute. Petitioners do not seriously contest that the doctor/patient relationship is a sufficient basis for third-party standing, and this Court has recognized the standing of physicians to represent their patients in health-care related litigation on several occasions. *City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 440 n.30 (1983);[1] *Singleton v. Wulff*, 428 U.S. 106, 114-116 (1976) (doctor-patient relationship sufficiently close to support *jus tertii*); *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 62 (1976) (physicians have standing to raise rights of patients); *Doe v. Bolton*, 410 U.S. 176, 188-89 (1973) (same).

Thus, the Third Circuit correctly found that the psychiatrist-patient relationship satisfied the criteria for third-party standing. Pet. App. at 15a-16a. Petitioners have presented nothing more than a disagreement with the Third Circuit's application of established law to the facts of this case, which is neither a compelling nor an appropriate basis for seeking this Court's review.

## II. Petitioners' Second Argument Was Not Raised Below And Is Based Upon A Mischaracterization Of PPS' Claims.

Petitioners also argue that the question of derivative standing raises "an important and recurring issue of separation of powers that should be decided by this Court."

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1. *City of Akron* was overruled on other grounds in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 881 (1992) (overruling *Akron* "to the extent it find[s] a constitutional violation when the government requires . . . the giving of truthful, nonmisleading information about the nature of the procedure, the attendant health risks and those of childbirth, and the 'probable gestational age' of the fetus").

Pet. at 18. Not only did Petitioners fail to raise their separation of powers argument below, but their argument is based on a fundamental mischaracterization that PPS' claims are an attack on managed care generally and an attempt to legislate a resolution. Because Petitioners failed to raise the argument below, the Third Circuit had no occasion to consider or address it. Moreover, PPS' actual claims, addressed as they are to Petitioners' specific conduct and not to managed care in general, do not threaten to legislate managed care such that separation of powers concerns are implicated. The Petition, accordingly, should be denied as to this argument as well.

### A. Petitioners' Constitutional Arguments Were Not Pressed Below.

"It is this Court's practice to decline to review those issues neither pressed nor passed upon below." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (citation omitted). "'Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.'" *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 212-13 (1998) (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970)). Before the Third Circuit, Petitioners briefed and argued the issue of third-party standing largely on prudential standing issues. The Court of Appeals accordingly decided it on those grounds. Pet. App. at 18a - 19a.

The constitutional issue that Petitioners failed to develop in the lower court proceedings therefore does not justify this Court's review.

> [W]e have said that "[o]rdinarily, this Court does not decide questions not raised or resolved in the lower court[s]." These principles help to maintain the integrity of the process of certiorari.

*Taylor v. Freeland & Kronz*, 503 U.S. 638, 645-46 (1992) (quoting *Youakim v. Miller*, 425 U.S. 231, 234 (1976) (*per curiam*)). Thus, this Court "ordinarily 'do[es] not decide in the first instance issues not decided below.'" *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, __, 122 S. Ct. 511, 514 (2001) (quoting *National Collegiate Athletic Assn. v. Smith*, 525 U.S. 459, 470 (1999)).[2]

This is not an "exceptional case," *Youakim*, 425 U.S. at 234, justifying deviation from the ordinary rule. While Petitioners now insist that vital Article III and separation of powers interests hang in the balance, Petitioners gave the Article III issue short shrift as it related to third-party standing, and further failed even to raise separation of powers before the Third Circuit. The Third Circuit, accordingly, noting that this Court has "consistently held that standing to assert third-party rights is a prudential matter," Pet. App. at 13a n.9, *citing Craig v. Boren*, 420 U.S. 190, 193-95 (1976), mentioned Article III aspects of third party or *jus tertii* standing only in passing, *id.* at 12a, and said not a word about separation of powers.

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2. *Accord, e.g., Roberts v. Galen of Virginia, Inc.*, 525 U.S. 249, 253-54 (1999) ("declin[ing] to address . . . claims at this stage" where they "do not appear to have been sufficiently developed below for us to assess"); *Patrick v. Burget*, 486 U.S. 94, 99 n.5 (1988) ("declin[ing] to consider" issue where "[a] close reading of the opinion below . . . reveals that the Court of Appeals did not address this question").

### B. The Amended Complaint Belies Petitioners' Characterization of PPS' Claims.

An equally fundamental problem with Petitioners' assertion of the separation of powers argument is its faulty factual premise. PPS does not broadly "attack the way in which MCOs deliver psychiatric care," Pet. at 5, nor does it seek to challenge or change the "fundamental way in which psychiatric managed care is delivered." Pet. at 20. To the contrary, what PPS seeks to change by its suit are the abusive and improper policies and procedures implemented by Petitioners within the managed care context that adversely affect both PPS' members and their patients. Amended Complaint, Introduction, Resp. App. at 1a-2a, 6a-7a, Counts I - VIII, *id.* at 30a-45a. PPS's pleading does not support the extravagant claim Petitioners describe.

Thus PPS does not, as Petitioners dramatically assert, seek to "commandeer the federal judiciary into resolving weighty, abstract issues of social policy best left — and until the decision below, traditionally left — to legislative determination." Pet. at 18. Rather, PPS seeks to address and reform *Petitioners'* own disregard and abuse of their contracts with PPS' members and their representations to its members' patients. The characterization Petitioners seek to place upon PPS' complaint is thus not supported by the pleaded facts — nor was it pressed in, or decided by, the court of appeals. As this Court held long ago in *Hormel v. Helvering*, it is fundamental to our system that the parties join issue on the facts prior to appeal:

> [O]ur procedural scheme contemplates that parties shall come to issue in the trial forum vested with authority to determine questions of fact. This is

> essential in order that parties may have the opportunity to offer all the evidence they believe relevant to the issues which the trial tribunal is alone competent to decide; it is equally essential in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence.

312 U.S. 552, 556 (1941). Petitioners' "straw man" analysis of the Amended Complaint is bombast, not fact. It is not a possible construction of the Amended Complaint, especially under Rule 12, and neither PPS nor the lower courts were provided with any opportunity to address it. Because this argument is based on claims not asserted here, this is manifestly not a proper issue for certiorari review.

## CONCLUSION

For all the foregoing reasons, Respondent Pennsylvania Psychiatric Society respectfully requests that the Petition be denied.

Respectfully submitted,

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Dated: August 14, 2002

# APPENDIX

**APPENDIX — AMENDED COMPLAINT DATED AUGUST 27, 1999**

**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CIVIL ACTION NO. 99-937

Judge Gary L. Lancaster

Chief Mag. Judge Kenneth J. Benson

PENNSYLVANIA PSYCHIATRIC SOCIETY,

Plaintiff,

v.

GREEN SPRING HEALTH SERVICES, INC., MAGELLAN HEALTH SERVICES, INC., HIGHMARK, INC., KEYSTONE HEALTH PLAN WEST, INC., KEYSTONE HEALTH PLAN CENTRAL, INC., and KEYSTONE HEALTH PLAN EAST, INC.,

Defendants.

**AMENDED COMPLAINT**

Plaintiff Pennsylvania Psychiatric Society, on behalf of its membership and their patients, brings this lawsuit to correct the defendant managed care organizations' systematic practice of refusing to authorize, and otherwise restricting, medically necessary and appropriate behavioral health care,

in violation of Pennsylvania law, NCQA accreditation standards, and defendants' agreements with mental health care providers and their patients. As and for its Complaint in this matter, plaintiff Pennsylvania Psychiatric Society hereby alleges as follows:

## THE PARTIES

### A. Plaintiff

1. Plaintiff Pennsylvania Psychiatric Society ("PPS") is a Pennsylvania non-profit corporation with its principal place of business at 777 East Park Drive, P.O. Box 8820, Harrisburg, PA 17105-8820. PPS represents physicians practicing psychiatric medicine in the Commonwealth of Pennsylvania, and brings this action on behalf of its members ("PPS-member psychiatrists") and their patients who are subscribers to the managed care plans at issue in this lawsuit ("patient-subscribers").

2. The PPS members on whose behalf PPS brings this lawsuit are psychiatric physicians licensed and practicing in the Commonwealth of Pennsylvania, under medical licenses conferred by the Commonwealth of Pennsylvania. These PPS-member psychiatrists entered into contracts with defendant Green Spring Health Services, Inc. ("Green Spring") to provide behavioral health and substance abuse services to patient-subscribers of the managed care plans.

3. The patient-subscribers on whose behalf PPS also brings this lawsuit are all subscribers to managed care plans offered in the Commonwealth of Pennsylvania, and which

are administered by Green Spring and Magellan, and/or are all patients of PPS-member psychiatrists.

**B. Defendants**

4. Green Spring Health Services, Inc. ("Green Spring"), is a Delaware corporation with its principal place of business at 5565 Sterrett Place, Suite 500, Columbia, Maryland 21044, and is in the business of supplying behavioral health and substance abuse services, as well as the credentialling of physicians to provide such services, under contract to managed care organizations. On information and belief, since Magellan Health Services, Inc. ("Magellan"), acquired a majority interest in Green Spring in April 1999, Green Spring has conducted managed care operations on behalf of, and under the control of, Magellan.

5. Magellan Health Services Inc. ("Magellan") is a Delaware corporation with its principal place of business at 3413 Peachtree Road NE, Suite 1400, Atlanta, Georgia 30326. Magellan is a behavioral health company that owns a majority interest in, and is a successor in interest to, Green Spring. Magellan participates in Green Spring's business of supplying behavioral health and substance abuse services, as well as the credentialling of physicians to the Provider Network established by Green Spring, under contract to managed care organizations. On information and belief, since acquiring a majority interest in Green Spring in April 1999, Magellan has authorized Green Spring to conduct managed care services on Magellan's behalf. Magellan itself acts to credential, or deny credentials, to providers participating in the Green Spring Provider Network, and was doing so even before its acquisition of Green Spring in April 1999.

6. Four Blue Cross companies operate in the Commonwealth of Pennsylvania. These companies are: (1) Highmark, Inc. ("Highmark") (western Pennsylvania); (2) Independence Blue Cross (Philadelphia and surrounding counties); (3) Blue Cross of Northeastern Pennsylvania (covering Scranton and Wilkes-Barre); and (4) Capital Blue Cross (central Pennsylvania and Harrisburg). This Complaint names as defendants the managed care affiliates of three of these entities that have entered into contracts with Green Spring — Highmark, Capital Blue Cross ("CBC") and Independence Blue Cross ("IBC").

7. Highmark is a non-profit corporation with its principal place of business at 1800 Center Street, Camp Hill, Pennsylvania 17089. Highmark is licensed by the Pennsylvania Insurance Department to operate a health service plan. Highmark was created in 1996 by the consolidation of Blue Cross of Western Pennsylvania and Pennsylvania Blue Shield. Highmark has participated, and continues to participate, in the administrative policies, procedures and practices at issue in this lawsuit, including the credentialling of physicians to Green Spring's Provider Network, the reimbursement of physicians for services provided, and the determination of the quality and level of care to be provided by PPS-member psychiatrists.

8. Keystone Health Plan West, Inc. ("KHPW") is a Pennsylvania incorporated business with its mailing address at 120 Fifth Avenue, Suite 922, Pittsburgh, PA 15222-3099. KHPW is a health maintenance organization owned by Blue Cross of Western Pennsylvania (50% capital stock) and Pennsylvania Blue Shield (50% capital stock). By virtue of

the consolidation of Blue Cross of Western Pennsylvania and Pennsylvania Blue Shield, Highmark is the ultimate owner of and successor in interest to KHPW. In conjunction with and through KHPW, Highmark offers managed care products, such as KeystoneBlue, SecurityBlue and CommunityBlue.

9. Keystone Health Plan Central, Inc. ("KHPC") is a Pennsylvania incorporated business with its mailing address at 300 Corporate Center Drive, Suite 620, P.O. Box 8812, Camp Hill, Pennsylvania 17011. KHPC is a health maintenance organization owned by Capital Blue Cross (50% capital stock) and Pennsylvania Blue Shield (50% capital stock). KHPC offers managed care products such as HealthOne, KeystoneBlue, SecurityBlue and CommunityBlue.

10. Keystone Health Plan East, Inc. ("KHPE") is a Pennsylvania incorporated business with a mailing address at Ste. 103E, 3 Bala Plaza East, 251 St. Asaphs Road, Bala-Cynwyd, Pennsylvania 19004. KHPE is a health maintenance organization owned by Delaware Valley HMO, Inc. (50% capital stock) and Keystone Ventures, Inc. (50% capital stock). KHPE offers managed care products such as Keystone Health Plan East.

11. On information and belief, the defendants were the agents for one another and were acting within the course and scope of such agency at all times mentioned herein.

**C. Jurisdiction & Venue**

12. Jurisdiction over defendants is proper pursuant to 28 U.S.C. § 1330.

13. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(a)(2).

**THE FACTS**

**D. Overview**

14. The first aspect of Green Spring's wrongful conduct concerns its relationships with Providers who are part of the Green Spring physician network. Green Spring attracts physicians, and avoids regulatory scrutiny, by publishing facially unobjectionable treatment standards and procedures. In actual practice, however, Green Spring suppresses utilization by: (1) refusing to credential physician applicants, or creating insurmountable obstacles to physician credentialling; (2) creating and fostering burdensome paperwork and administrative requirements that make timely, medically appropriate treatment of patient-subscribers virtually impossible; (3) failing to pay Providers for services rendered, or delaying payments for "clean claims" beyond the 45-day time limit imposed by section 2166 of the Quality Health Care Accountability and Protection Act; and (4) interfering directly with physician-patient relations.

15. The second aspect of Green Spring's wrongful conduct concerns its relationships with patient-subscribers to the Plans. The Plans and Green Spring encourage

subscriber participation in managed care plans by advertising the availability of a full network of mental health and substance abuse treating physicians, as well as the availability of a certain number of outpatient treatment sessions and inpatient days of treatment. When subscribers join the managed care plans, however, the Plans and Green Spring do not provide the advertised level of mental health and substance abuse services. Green Spring intentionally suppresses utilization of services below the levels promised under the managed care plans by: (1) creating paperwork and authorization requirements that make utilization of advertised levels of service by patient-subscribers impossible; (2) denying authorization for medically necessary and appropriate treatment of mentally distressed patient-subscribers when they are at their most vulnerable and when they are least likely to protest treatment decisions; (3) often authorizing less expensive and inadequate treatment that is not within the applicable standard of care; and (4) interfering with patient-subscriber relations with their psychiatrists.

**E. Green Spring's Contracts With Managed Care Organizations**

16. KHPW, KHPC and KHPE (collectively, the "Plans") have entered into contracts with Green Spring to provide behavioral health services to the subscribers of the Plans. Copies of the respective Managed Care Service Agreements, or excerpts thereof, between the Plans and Green Spring (which are on file with the Commonwealth Department of Health) are attached hereto as Exhibits A, B and C, respectively.

17. PPS-member psychiatrists are third-party beneficiaries to the Managed Care Services Agreements between Green Spring and the Plans.

18. Under the Managed Care Service Agreements, the Plans are accountable for complying with all applicable state laws and standards with respect to the behavioral health and substance abuse treatment provided under their managed care plans, as are their contractors, such as Green Spring and Magellan, which provide a portion of those services.

**F. The Managed Care Organization Plans**

19. Numerous patient-subscribers living in Pennsylvania seek mental health treatment under Health Maintenance Organization ("HMO") and other managed care plans maintained and operated by the Plans, including KeystoneBlue, SecurityBlue, CommunityBlue, and HealthOne.

20. Green Spring administers the mental health care benefit of these various Plans. Under this managed care arrangement, individual psychiatric physicians, including PPS-member psychiatrists, who are independently licensed and trained to render professional services to their patients, are primarily responsible for preparing treatment plans for their patients and rendering that treatment. Green Spring, however, employs caseworkers, who are generally not licensed or trained psychiatrists and who do not have the clinical background to diagnose the medical needs of patient-subscribers, to evaluate and approve the treatment plans that determine the nature of reimbursements for professional care.

21. The Plans typically represent to the public, psychiatrists, subscribers, patient-subscribers and employers that the Plans will provide mental health benefits for up to 20 outpatient treatment sessions per calendar year, and up to 30 inpatient days per consecutive 12-month period, with low or no co-payments and low or no deductibles for its patient-subscribers.

**G. Provider Agreements between PPS-Member Psychiatrists and Green Spring**

22. Green Spring's services include referring patient-subscribers to physicians who render mental health and/or chemical dependency treatment services.

23. The PPS-member Psychiatric Physicians entered into individual and/or group Provider Participation Agreements with Green Spring ("Provider Agreements"), pursuant to which the physicians agreed to render mental health and/or chemical dependency treatment services to individuals covered by benefit plans, including plans sponsored by Highmark. A specimen copy of a Provider Agreement is attached hereto as Exhibit D.

24. The term of the Provider Agreements is two years, with a ninety (90) day notice of termination period applicable to both parties.

25. Psychiatric physicians are bound to treat patient-subscribers in accordance with certain ethical standards as a result of their licensure in the Commonwealth of Pennsylvania.

26. Green Spring is in the business of contracting with psychiatric physicians to form a network of providers of mental health and substance abuse treatment. Green Spring enters into contracts with health plans, managed care organizations ("MCO") or self-insured employers, to which Green Spring supplies its provider network as the mental health/substance abuse component of a health plan or MCO.

27. In Pennsylvania, Green Spring's network of providers is the sole source of mental health/substance abuse treatment available to subscribers of Highmark, CBC and IBC managed care health plans, including KHPW, KHPC and KHPE (collectively, "the Plans").

28. Because Highmark has a dominant market share in Western Pennsylvania, and to a great extent in Central and Eastern Pennsylvania, psychiatric physicians must contract with Green Spring to obtain access to, and provide services for, patient-subscribers requiring mental health/substance abuse services.

29. Because Magellan and Green Spring administer most of the monitoring and approval of behavioral health treatment plans for Aetna U.S. Healthcare and Independence Blue Cross, the two dominant insurers in Eastern Pennsylvania, as well as several non-defendant insurers in Western Pennsylvania, psychiatric physicians in Pennsylvania must utilize Magellan and Green Spring to obtain access to, and provide services for, the great majority of patients requiring mental health/substance abuse services.

30. Using its dominant market power as the source of all referrals for subsidiaries of Highmark and the Plans, Green Spring and Magellan, in conjunction with Highmark and the Plans, maximize profits on various managed health care insurance products by inappropriately limiting the quantity and quality of mental health/substance abuse services provided to patient subscribers of Highmark and the Plans, as well as the amounts paid to PPS-member psychiatrists for providing those services.

31. This Complaint arises from Green Spring's violation of its contractual, common-law and statutory obligations to authorize PPS-member psychiatrists to provide medically necessary substance abuse and mental health services. Green Spring is contractually obligated to administer such services on behalf of the defendant managed care plans in the Commonwealth of Pennsylvania, and to compensate PPS-member psychiatrists for providing those services. The effects of Green Spring's failures fall into two categories: (1) interference with PPS-member psychiatrists' ability to practice psychiatry to the extent guaranteed in their Provider Agreements with Green Spring and within the applicable standard of care; and (2) directly jeopardizing the mental health and welfare of patient-subscribers. Both categories result from Green Spring's acts of suppressing utilization of medical resources.

32. The Provider Agreement states that Green Spring must provide medically necessary health services to patient-subscribers in a "prompt and efficient manner consistent with the standard of practice of the community in which the Provider renders Health Services." The Agreement also states

that Green Spring's utilization management procedures "shall not diminish Provider's obligation to render Health Services consistent with the applicable standard of care." Thus, the Provider Agreement requires the parties to work within the managed care system to ensure that patient-subscribers receive appropriate and ethical treatment.

33. The Provider Agreement also contains: (1) an arbitration provision requiring providers to arbitrate claims arising out of or relating to the Provider Agreement; and (2) a termination without cause provision, allowing either party to terminate the Provider Agreement with 90 written days notice to the other party.

34. As a practical matter, PPS-member psychiatrists do not exercise their right to arbitrate the issues raised by this Amended Complaint out of fear that Green Spring will retaliate by terminating their Provider Agreement without cause. The effect of such termination would be immediately catastrophic for most PPS-member psychiatrists, cutting off access to the great majority of their patients, and making the practice of psychiatry financially impossible in the Commonwealth of Pennsylvania.

**H. The HMO Provider Panel**

35. Psychiatrists who enter into Provider Agreements become part of a large panel of Providers for the managed care plans. Defendants represent to the public, employer-purchasers, and patient-subscribers that they have a large, qualified, stable group of psychiatric physicians and other professionals whose services are available to the patient-

subscriber under the managed care plans. The defendants use the quality, size and continuity of these Provider relationships to market the managed care plans. For example, the right to use the names of Provider psychiatrists in "promotional activities" is a benefit Green Spring specifically receives under the Provider Agreement. *See* Exh. D, Section 7.

**I. Representations Concerning the Availability of Treatment**

36. The Plans and Green Spring represent that the managed care plans will be administered according to certain practices and guidelines. PPS-member psychiatrists who entered into relationships with these patient-subscribers relied on these standards and guidelines, some of which are set forth below:

a. Typically, the Plans represent that patient-subscribers and psychiatrists will be allowed up to 20 outpatient treatment sessions per calendar year, and up to 30 inpatient days per consecutive 12-month period, so long as the sessions are medically necessary or appropriate. Certain summary of benefits charts state that "up to 20 visits per calendar year" of outpatient mental health treatment services and "30 days per 12 consecutive months" of inpatient treatment will be available to subscribers of the managed care plans.

b. The Plans represent that 7 days of detoxification, and 30 days of rehabilitation for substance abuse care may be authorized per year.

c. The Plans represent that adverse decisions by Green Spring about whether continued mental health treatment is appropriate or medically necessary may be freely appealed or challenged by the psychiatrist or patient-subscriber without undue burdens and without adverse consequences.

37. Despite the Plans' representation that a certain number of outpatient treatment sessions are available for medically necessary, mental health treatment through the managed care plans, Green Spring routinely and systematically limits the number of treatment sessions to far fewer, a practice which restricts the quantity, and undermines the quality, of behavioral health care received by patient-subscribers. The Plans and Green Spring do not openly disclose that psychiatrists are expected to deliver most mental health treatment in far fewer sessions than are advertised. Instead, the Plans, Green Spring misrepresents to the public, to employer-purchasers and to patient-subscribers that the managed care plans allow a certain number of treatment sessions per year when, in reality, internal guidelines result in benefit limitations hidden from patient-subscribers. A representative example of the managed care promotional materials discussing promised benefits is attached hereto as Exhibit E.

*Appendix*

## J. Green Spring's Methods Of Utilization Suppression

### 1. Credentialling

38. Green Spring and Magellan hinder the physician credentialling process, and take affirmative steps to revoke physicians' credentials without justification.

39. Green Spring and Magellan have repeatedly made application to their Provider Panel difficult by not providing applications to doctors, or by claiming to have lost completed applications. For example, one PPS-member psychiatrist has attempted, in the four years preceding this Complaint, to apply for admission to the Green Spring Provider Panel. When he first filed his application with Green Spring, Green Spring stated that it lost the application. When Green Spring reportedly recovered the application, Green Spring rejected it because the professional insurance policy with the application had expired during the time the application was in Green Spring's possession. Most recently, Green Spring stated that it has the PPS-member psychiatrist's application, but that Green Spring cannot act on it because they have been taken over by Highmark. Throughout this period, Green Spring has failed to disclose its credentialling criteria to the PPS-member psychiatrist, in violation of section 2121(d) of the Quality Health Care Accountability and Protection Act.

40. In another instance, a PPS-member psychiatrist specializing in the treatment of cancer patients had her application returned to her by Magellan two months after it was submitted, indicating that she had not completed certain

pages of the application. Upon reviewing her submission, the PPS-member psychiatrist found that she had in fact completed the pages identified by Magellan. She nonetheless resubmitted a complete application. After receiving no word for three months, the PPS-member psychiatrist called Magellan and was told that they had never received her second application. She submitted a third application, which Magellan again returned, stating that the application lacked certain documents that the PPS-member psychiatrist had in fact already submitted. After submitting her fourth application, the PPS-member psychiatrist called Magellan a month later and was told that Magellan had received her application and was processing it. Upon calling Magellan two weeks later, however, she was told that Magellan had no application for her on file. The PPS-member psychiatrist called once more after another two months had passed to tell learn that the application had been received, but that it was not entered onto the system, and that it was missing her certificate of insurance. Despite the PPS-member psychiatrist's knowledge that she had in fact submitted her certificate of insurance, she faxed Magellan a copy her certificate that same afternoon. The PPS-member psychiatrist was then informed, two weeks later, that her application was missing a verification of her medical degree and internship, which had in fact been included with her earlier submissions, and which could only be obtained from her medical school and the hospital at which she completed her internship. The PPS-member psychiatrist still has not been credentialled into the Provider Network.

41. Throughout this period, the PPS-member psychiatrist has been unable to receive Green Spring/

Magellan authorizations, despite the fact that she is the only psychiatric oncologist in the region. When the PPS-member psychiatrist's distraught patient-subscribers called Green Spring in tears, pleading to be allowed to treat with the PPS-member psychiatrist given her unique expertise, Green Spring's response was reportedly, "You can't tell me she's the only psychiatrist who knows how to treat cancer patients."

42. Green Spring and Magellan have also decredentialled PPS-member psychiatrists without notice in violation of the termination provision of the Provider Agreements. For example, in November 1998, Green Spring, Highmark and/or Magellan decredentialled a PPS-member psychiatrist without notice, and contrary to the provisions of the Provider Agreement. The PPS-member psychiatrist only discovered the decredentialling after being told by a case manager that Green Spring had denied a treatment authorization. The PPS-member psychiatrist had seen patient-subscribers for a month after being decredentialled without notice. Although Green Spring eventually restored the PPS-member psychiatrist's credentials, her practice was seriously disrupted in the intervening time period.

43. Since the acquisition of Green Spring by Magellan in April 1999, Magellan has also required the re-credentialling of many PPS-member psychiatrists. Throughout this re-credentialling process, Magellan has repeatedly required one or more resubmissions by PPS-member psychiatrists. In addition, Magellan has decredentialled PPS-member psychiatrists without notice, after claiming to have lost their applications and/or after informing them that their applications were acceptable. Due

to being decredentialled, several PPS-member psychiatrists have been unable to continue their treatment of certain patient-subscribers, disrupting the continuity of care received by the affected patient-subscribers, and cutting off the PPS-member psychiatrists' access to their patients and new referrals.

44. In addition, Green Spring has failed to appoint subspecialists to its Provider Panels even when such panels were in need of such subspecialists, and even though Green Spring represents that such subspecialists are available. For example, Green Spring claimed to have a child psychiatrist on a panel in the Berks County area, and rejected Provider applications to the child psychiatrist subspecialty panel on the basis that the subspecialty was full. In actuality, there was no board-certified (or otherwise qualified) child psychiatrist on the panel. Green Spring refused to appoint a PPS-member psychiatrist who was board certified in child psychiatry, even though the supposed incumbent members of the child psychiatric panel were not board certified. Because Green Spring refused to staff the child psychiatry panel adequately, Providers referring patient-subscribers to child psychiatrists had to make referrals to psychiatrists in Philadelphia County or other distant areas for treatment, which limited patient-subscribers' use of those services.

**2. Administrative burdens and authorization delays**

45. Green Spring further suppresses behavioral health care utilization by imposing onerous and overly time-consuming administrative burdens.

46. Green Spring unreasonably delays treatment authorizations in violation of Standard UM 4 of the National Committee for Quality Assurance Standards for Accreditation. For example, one PPS-member psychiatrist has admitted to inpatient facilities patient-subscribers requiring medical care under the appropriate standard of care, only to encounter unreasonable delays in treatment authorization from Green Spring. In one instance, a patient-subscriber was admitted at approximately 9 a.m. in the morning, but Green Spring did not authorize treatment for the patient-subscriber until 4 p.m. that day. The mentally distressed patient-subscriber had to wait in the facility's hallway for the entire day for treatment authorization.

47. Green Spring authorizes inappropriately short periods of treatment, thereby increasing administrative burdens, and making appropriate and consistent patient care virtually impossible to accomplish. For example, when one PPS-member psychiatrist has treated severely disturbed patient-subscribers requiring prolonged inpatient care, Green Spring has required justification from him every 72 hours for continuation of such care. In attempting to obtain reauthorization from Green Spring, the PPS-member psychiatrist has been placed on hold for up to forty-five minutes, after which he must speak with several different levels of Green Spring representatives reiterating each time the patient-subscriber's entire history, in order to obtain authorization. Despite the PPS-member psychiatrist's time and effort to obtain reauthorization when continued inpatient care is medically necessary and appropriate, Green Spring has routinely refused to reauthorize the appropriate level of care, even where the patient-subscriber is suicidal or

assaultive. Because of these excessive administrative burdens, the PPS-member psychiatrist has withdrawn, in part, from active participation in the Green Spring panel, and has lost the patient relationship that was supported by the patient-subscriber's managed care plan.

48. For even the most profoundly distressed patient-subscribers, who pose a threat to themselves and/or others, Magellan has often required reauthorization for every day of inpatient care. Magellan has required daily reauthorization even though the severity of such patient-subscribers' mental conditions clearly make long-term inpatient care medically necessary and appropriate.

**3. Failure to make payments**

49. Green Spring has repeatedly failed to make timely payment, or any payment, in accordance with section 2166 of the Quality Health Care Accountability and Protection Act for services that PPS-member psychiatrists have provided to their patient-subscribers in keeping with the applicable standard of care.

50. Common Green Spring tactics include requiring repeated submissions and resubmissions of treatment and authorization documentation with the result of delaying or avoiding payment to PPS-member psychiatrists, as well as post-treatment denials of previously authorized treatment. The process of obtaining payment for services from Green Spring has lasted for two years or more in some cases involving PPS-member psychiatrists.

51. In another example, one PPS-member psychiatrist has provided mental health and/or chemical dependency treatment services, as a member of Green Spring's Preferred Provider Organization, to individuals covered by benefit plans, including plans sponsored by Highmark. The PPS-member psychiatrist's practice group sent invoices for services rendered by the PPS-member psychiatrist to Green Spring and Highmark. On information and belief, in approximately May of 1998, Highmark and Green Spring changed the practice group's "provider number" (required by Highmark and Green Spring for payment of providers) without notice. The failure of Highmark and Green Spring to supply the practice group with a correct provider number, or notify the practice group of the changed provider number, resulted in Highmark's improper refusal to make payment on many of the invoices. Highmark and Green Spring also failed to pay the practice group, instead making payment directly to patient-subscribers, contrary to the Provider Agreement and invoices.

**4. Interference with Physician-Patient Relationships**

52. Green Spring's policies also interfere with physician-patient relationships.

53. One PPS-member psychiatrist was the treating psychiatrist for a patient-subscriber, Ann Doe, who presented with symptoms of severe anxiety, and in a severely agitated state. The PPS-member psychiatrist accordingly recommended that Ann be hospitalized, but Green Spring would not authorize this "next level" of care. Ann's family

was so distressed by the inadequate care administered by Green Spring, which they identified with the PPS-member psychiatrist as her treating psychiatrist, that they no longer brought Ann for treatment to the PPS-member psychiatrist.

**5. Other methods to suppress utilization**

54. Green Spring effectively reduces utilization both through administrative policies, procedures and practices, and by directing patient-subscribers only to certain Providers.

55. In one example of utilization suppression through administrative means, Green Spring refers patient-subscribers to only one of the several locations where one PPS-member psychiatrist's practice group would see patient-subscribers. This Green Spring conduct limits the number of geographic options available to Green Spring subscribers, and reduces the continuity of care received by the PPS-member psychiatrist's patient-subscribers who do not reside near the one referral location. Green Spring's failure to utilize the other locations of the PPS member's practice thus suppresses the availability of care to patient-subscribers in the area of those practice locations.

56. Green Spring and the Plans also suppress utilization of mental health and substance abuse services by not publishing the names and practice locations of psychiatrists within the provider network to patient-subscribers. By contrast, the Plans publish the names and practice locations of other medical specialists participating in their provider networks.

57. For example, Highmark offers an Internet directory of professionals participating in its Preferred Blue programs. The directory specifically excludes psychiatrists from its listing, stating: "This on-line Preferred Blue (PPO) Directory does not display mental health or substance abuse providers."

58. As a result, patient-subscribers who receive mental health or substance abuse referrals from their primary care physicians must call Green Spring to learn what provider locations are available. On information and belief, Green Spring will only direct patient-subscribers to certain mental health and substance abuse providers in any given geographic region, despite the presence of other PPS-member psychiatrists within the provider network who practice in that region. In contrast, a patient-subscriber may freely choose from among any specialist in the Plans' provider directories for non-mental health/substance abuse referrals, without having to call plan administrators to obtain information about provider locations.

59. Green Spring's and the Plans' refusal to publish the names and practice locations of psychiatrists in the provider network suppresses the utilization of services by depriving patient-subscribers of the knowledge that their PPS-member psychiatrists are participating providers.

60. On information and belief, defendants have maintained profit-driven "Provider Profiles" to evaluate psychiatrists on the Green Spring Provider Panel, in violation of the financial incentives prohibition of section 2112 of the Quality Health Care Accountability And Protection Act.

61. The Provider Profiles reward individual psychiatrists for earning profits for the Plans and Green Spring and penalize psychiatrists for providing or seeking to provide medically necessary and appropriate care based upon the individual patient-subscriber's medical needs.

62. On information and belief, as part of its Provider Profiling system, Green Spring has evaluated, and continues to evaluate, individual psychiatrists using profit-based criteria, including: (1) the average number of sessions used per patient-subscriber (without regard to the seriousness of the patient-subscriber's condition or diagnosis); (2) the number of times the psychiatrist requests additional sessions (without regard to the appropriateness of additional treatment of a patient-subscriber's conditions or diagnosis); and (3) the number of times a psychiatrist appeals or challenges a Green Spring decision to withhold further treatment that the psychiatrist believes is necessary (without regard to the success or the merits of the appeals). Green Spring does not disclose the existence of the Provider Profile system in negotiating its Provider Agreements with psychiatrists or in marketing the managed care plans.

**K. Defendants' Failure to Deliver the Plans' Promised Benefits To Subscribers**

**1. Authorization requirements**

63. In addition to the above-described impact on physician practices, Green Spring's suppression of care utilization has a direct, adverse impact on patient-subscribers.

64. Green Spring delays authorization for treatment or requires re-authorizations for very short increments of treatment, making utilization of the number of visits represented to be available by the Plans impossible.

65. For example, Beth Doe is the member of a managed care plan under which she is entitled to 20 outpatient visits for psychiatric care per year. Green Spring's management of Beth Doe's case ensures that Beth will only receive, at most, approximately half of the care authorized by her plan. Green Spring will only authorize two to three visits per authorization request. Because of the paperwork burden of rejustifying and rescheduling subsequent requests, Beth is effectively allocated by Green Spring approximately 10 treatment visits per year, despite her need, in the medical judgment of her PPS-member psychiatrist, for additional outpatient visits.

**2. Restrictive treatment authorizations**

66. Green Spring has authorized treatment for severely disturbed individuals for as few as two days, and at the end of that time, denied authorization for additional care, despite the risk of suicide and other adverse health consequences to patient-subscribers.

67. Green Spring has also recklessly endangered the health of patient-subscribers by failing to reauthorize inpatient care after an initial period of hospitalization.

68. For example, Carol Doe, an agitatedly depressed, severely psychotic and manic patient-subscriber at risk of suicide was admitted for an initial five day inpatient care

episode. Green Spring insisted on discharging Carol after the five day period, despite warnings of her lack of improvement. The early discharge resulted in Carol attempting suicide, causing her physical injury, and serious regression in her mental state.

69. In another example, "Health One" subscriber Dorothy Doe was voluntarily admitted for five days of treatment for extreme depression, having been taken to the facility by the Pennsylvania State Police. After five days of inpatient treatment, Dorothy continued to be severely depressed. Despite the promise of full coverage for 30 days under her plan, Green Spring informed Dorothy, through her psychiatrist, that no more treatments would be available to her, and that she would have to be discharged. The next evening, Dorothy continued to have substance abuse problems and attempted suicide by slitting her wrists. Dorothy was later informed that payment for the earlier, authorized treatment has been denied. Dorothy had to spend considerable time and effort to secure payment for the earlier, approved, treatment, and was never compensated for the adverse consequences of the denial of treatment.

70. Green Spring's repeated denial of continued care for suicidal or severely depressed patient-subscribers represents a pattern of refusing authorization for treatment for patient-subscribers who are at their most vulnerable and who are least able to protest or oppose Green Spring's treatment decisions and denials. This systematic refusal to authorize medically necessary and appropriate continued care effectively deprives patient-subscribers of the Plans' promised benefits because: (1) the diminished mental

capacity of suicidal or severely depressed patient-subscribers makes opposition from patient-subscribers unlikely; and (2) because PPS-member psychiatrists do not have the resources to engage in the prolonged appeal of such decisions.

**3. Arbitrary denials of care**

71. Green Spring restricts the level and quality of care based on arbitrary criteria that do not consider medical necessity and appropriateness, in violation of section 2152 of the Quality Health Care Accountability and Protection Act, and Standard AR 3 of the National Committee for Quality Assurance Standards for Accreditation.

72. Green Spring has refused to authorize proposed treatment plans because the treatment maintains the same course of therapy provided in previous treatment plans.

73. For example, one PPS-member psychiatrist has proposed treatment plans that were medically necessary and appropriate for her patient-subscribers. In each instance, the Green Spring "Care Manager" refused to authorize the treatment, stating that the treatment plan being proposed for the next round of sessions was the same as the treatment plan proposed for the sessions that had already taken place. As a result, PPS-member psychiatrists are often unable to provide medically necessary and appropriate treatment to patient-subscribers who do not respond to therapy within the arbitrary time frame allotted to patient-subscribers by Green Spring.

**4. Interference with patient-psychiatrist relations**

74. Green Spring caseworkers, who are generally not trained or licensed psychiatrists and who never meet the patient-subscriber, are called upon to make critical decisions about whether continued treatment is appropriate. These decisions are based upon internal guidelines and standards developed to increase profits by denying care. The internal guidelines and standards conflict with Green Spring's obligations under its Provider Agreements and contradict defendants' representations to employer-purchasers and patient-subscribers regarding the mental health benefits available under the managed care plan.

75. Under the Provider Agreement, psychiatrists are required to furnish patient-subscribers with appropriate treatment of the type that the psychiatrist "customarily provides." Yet Green Spring often interferes with the psychiatrist-patient relationship by refusing to authorize treatment sessions that the treating psychiatrist has determined are medically necessary and appropriate given the specific needs of the individual patient-subscriber.

76. Green Spring has contacted individual patient-subscribers, and intervened in their utilization of health care benefits. For example, Eileen Doe, a treatment refractory (*i.e.*, not readily yielding to treatment) patient-subscriber being treated under a plan associated with Green Spring, was recently contacted by a Highmark "caseworker" who informed Eileen that she had been assigned to her case and would serve as her "friend," to make sure she was getting "proper treatment" from her doctor. Highmark's direct contact

with Eileen made the patient-subscriber uncomfortable, compromised the privacy of the psychiatrist-patient relationship, and interfered with the delivery of medical care.

**5. Disfavoring authorizations of treatment by psychiatrists**

77. Green Spring often authorizes treatments by psychologists and therapists rather than psychiatrists, even where psychiatric treatment is clinically indicated.

78. Green Spring has facilitated treatment by psychologists and therapists, because of the lower costs associated with these services, by imposing fewer administrative and authorization requirements on psychologists and therapists.

79. Such referrals are often not in the patient-subscribers' best interests, and result in an inappropriate level and type of care for the patient-subscriber.

**L. Failure to Address PPS-Member Psychiatrists' Concerns**

80. Members of PPS have requested that Green Spring, in good faith, and pursuant to their Provider Agreements, rectify Green Spring's wrongful conduct.

81. Through their representatives, PPS-member psychiatrists have requested disclosure of certain Green Spring materials mentioned within this complaint in an attempt to establish a meaningful dialogue. For the most part,

the Plans and Green Spring have failed to disclose the requested materials. In good faith, PPS-member psychiatrists do not believe that the response received from the Plans and Green Spring can lead to a resolution of the issues raised by this Complaint.

## CAUSES OF ACTION

## COUNT I

## BREACH OF CONTRACT

## (PPS v. GREEN SPRING, THE PLANS, MAGELLAN & HIGHMARK)

82. Plaintiff incorporates by reference all allegations contained in paragraphs 1 through 74 above, as though set forth herein at length.

83. Pursuant to the Provider Agreement and other agreements and representations, Defendants were obligated to administer mental health and substance abuse managed care operations that reimbursed psychiatrist physicians who provided medically necessary and appropriate treatment within the applicable standard of care. Typically, up to 20 outpatient visits per calendar year, and 30 days of inpatient treatment per consecutive 12-month period, were covered under the managed care plans.

84. Defendants have refused to authorize payment to PPS-member psychiatrists for substance abuse and mental health treatments that were medically necessary and

appropriate, and of the type the PPS-member psychiatrists normally provide to non-managed care patients in keeping with the applicable standard of care. Defendants set limits on treatment that do not adequately provide for the needs of individual patient-subscribers, and that are designed to maximize profits by denying care that defendants are contractually obligated to administer in accordance with both the Provider Agreements and the managed care plans.

85. Moreover, the onerous administrative burdens imposed by Defendants, including unreasonably short authorization periods and excessively time-consuming authorization procedures, make it overly-burdensome for PPS-member psychiatrists to provide medically necessary and appropriate treatment within the applicable standard of care.

86. This and other conduct constitutes a breach of Defendants' obligations to provide payment to Providers for appropriate treatment of patient-subscribers within the applicable standard of care.

87. By these and other actions, Defendants have violated the obligations owed to PPS-member psychiatrists under the Provider Agreements, to their financial and professional detriment.

WHEREFORE, Plaintiff Pennsylvania Psychiatric Society respectfully requests that the Court enter judgment:

a. declaring that Defendants have violated their obligations to the PPS-member psychiatrists under the

Provider Agreements by failing to authorize and make timely payment for medically necessary and appropriate mental health services that PPS-member psychiatrists normally provide in keeping with the applicable standard of care;

b. ordering Defendants to eliminate or redesign the administrative policies, practices and procedures that make it overly-burdensome to obtain authorization and payment for the provision of medically necessary and appropriate care that falls within the coverage of the managed care plans;

c. awarding damages to PPS on behalf of its member psychiatrists for the loss of patients, loss of income related to the wrongful denial of medically necessary and appropriate care, increased administrative costs, and all other losses, plus interest and costs;

d. awarding punitive damages to PPS on behalf of its member psychiatrists; and

e. granting such further relief as the Court may deem appropriate.

**COUNT II**

**BREACH OF CONTRACT**
**(PPS v. GREEN SPRING, THE PLANS, MAGELLAN & HIGHMARK)**

88. Plaintiff incorporates by reference all allegations contained in paragraphs 1 through 80 above, as though set forth herein at length.

89. Defendants' Provider Agreements with PPS-member psychiatrists state that their administrative procedures shall not diminish the Provider's obligation to render health services consistent with the applicable standard of care.

90. Defendants have interfered with the Providers' legal obligations to render said Health Services consistent with the applicable standard of care because of its aggressive use of utilization reviewers that interfere with the Providers' ability to render services within the applicable standard of care.

WHEREFORE, Plaintiff Pennsylvania Psychiatric Society respectfully requests that the Court enter judgment:

a. declaring that the administrative policies, procedures and practices employed by Defendants violate Defendants' obligations under the Provider Agreements to authorize medically necessary and appropriate mental health services within the applicable standard of care;

b. ordering Defendants to eliminate the administrative policies, procedures and practices that prevent Providers, including PPS-member psychiatrists, from providing medically necessary and appropriate mental health and substance abuse services within the applicable standard of care, as required under the Provider Agreements; and

c. granting such further relief as the Court may deem appropriate.

*Appendix*

**COUNT III**

**BREACH OF CONTRACT**
**(PPS v. GREEN SPRING, THE PLANS, MAGELLAN & HIGHMARK)**

91. Plaintiff incorporates by reference all allegations contained in paragraphs 1 through 83 above, as though set forth herein at length.

92. Pursuant to the Provider Agreement, Defendants may only terminate a Provider from the provider network after 90 days' notice.

93. Certain PPS-member psychiatrists were terminated without notice, in violation of the Provider Agreement. These terminations violated Defendants' contractual obligations to the detriment of these PPS-member psychiatrists.

WHEREFORE, Plaintiff Pennsylvania Psychiatric Society respectfully requests that the Court enter judgment enjoining Defendants from terminating Providers in a manner inconsistent with the Provider Agreement.

*Appendix*

## COUNT IV

## BREACH OF CONTRACTUAL DUTY OF GOOD FAITH AND FAIR DEALING (PPS v. GREEN SPRING, THE PLANS, MAGELLAN & HIGHMARK)

94. Plaintiff incorporates by reference all allegations contained in paragraphs 1 through 86 above, as though set forth herein at length.

95. Defendants have delayed and failed to pay amounts owed to PPS-member psychiatrists.

96. Defendants have failed to identify and refer patients to certain treatment locations of PPS-member psychiatrists, adversely affecting the psychiatrists' practices. Defendants have failed to publish in their provider directories the names and practice locations of available mental health and substance abuse professionals, despite publishing that information for non-mental health professionals. Defendants have designed their utilization and referral management system to suppress utilization and to limit the number of geographic options for service available to their patient-subscribers, depriving patient-subscribers of convenient access to PPS-member psychiatrists within the Provider Network.

97. Through the Provider Agreements, Defendants obtained the benefit of advertising the availability of services from Providers, including PPS-member psychiatrists. In practice, however, Defendants deprive those Providers of

the referrals and visits that should be generated by participation in the network by only disclosing limited geographic options for services to subscribers. Defendants therefore deprive Providers of the benefits that should arise from their bargained-for participation in provider networks.

98. Defendants' actions are not in good faith. As a direct and proximate result of Defendants' actions, PPS-member psychiatrists have suffered and continue to suffer serious damages, including but not limited to, loss of money owed by Defendants, loss of use of said money, and loss of interest on said money.

WHEREFORE, Plaintiff Pennsylvania Psychiatric Society respectfully requests that the Court enter judgment:

a. declaring that Defendants' administrative policies, procedures and practices breach Defendants' contractual duty of good faith and fair dealing under the Provider Agreements;

b. enjoining Defendants, *inter alia*, from their practice of referring patient-subscribers to only one location for multiple practice, individual, or group practice Providers;

c. ordering Defendants, *inter alia*, to publish in their provider directories the names and practice locations of mental health and substance abuse professionals;

d. awarding damages, plus interest and costs, to PPS-member psychiatrists for amounts due and owing from Defendants that have not been paid within 45 days of requesting payment from Green Spring and the Plans for the provision of medically necessary and appropriate care;

e. ordering an accounting from Defendants of all amounts due and owing in excess of 45 days since requesting payment from Green Spring and the Plans, with an explanation for the reason for non-payment and a timetable for resolving these claims; and

f. granting such further relief as the Court may deem appropriate.

**COUNT V**

**INTERFERENCE WITH PRESENT AND PROSPECTIVE ECONOMIC ADVANTAGE (PPS v. GREEN SPRING, THE PLANS, MAGELLAN & HIGHMARK)**

99. Plaintiff incorporates by reference all allegations contained in paragraphs 1 through 91 above, as though set forth herein at length.

100. The psychiatrist-patient relationship is a uniquely personal professional/business relationship based upon trust. The success of therapy depends upon the atmosphere of confidence and trust developed between the psychiatrist and the patient, as well as sufficient access by the patient to his or her psychiatrist. This relationship takes time to establish and is not easily transferred.

101. The Defendants were aware of the uniquely personal nature of the psychiatrist-patient relationship during all time periods relevant to the Complaint.

102. The Defendants have intentionally, willfully and recklessly interfered with psychiatrist-patient relations by: (1) failing to authorize medically necessary and appropriate mental health treatment; (2) failing to disclose their systemic efforts to reduce the level and quality of care provided by PPS-member psychiatrists to patient-subscribers who participate in defendants' managed care plans; and (3) failing to create an adequate provider network; and (4) obstructing access by patient-subscribers to their psychiatrists by, among other means, inappropriately limiting care, failing to disclose relevant credentialling criteria to psychiatrists seeking to be credentialled, and failing to provide written notice of the denial of initial credentialling or recredentialling to applicants to the Provider Network.

103. The Defendants are liable for *per se* tortious conduct for violation of the standards established by the Quality Health Care Accountability and Protection Act.

104. Through these activities Defendants intentionally, willfully and recklessly interfered with the professional business relationship and psychiatrist-patient relationship between PPS-member psychiatrists and their patient-subscribers, to the detriment of both psychiatrist and patient.

WHEREFORE, Plaintiff Pennsylvania Psychiatric Society respectfully requests that the Court enter judgment:

a. ordering Defendants to eliminate the administrative policies, procedures and practices that make it overly-burdensome to obtain authorization for medically necessary and appropriate care and that obstruct patient-subscribers' access to their PPS-member psychiatrists;

b. awarding damages to PPS-member psychiatrists for the loss of patients, loss of income related to the wrongful denial of medically necessary and appropriate care, increased administrative costs, and all other losses, plus interest and costs;

c. ordering Defendants to immediately disclose to Plaintiff and its members Defendants' qualifications and credentialling criteria in full;

d. awarding punitive damages to PPS-member psychiatrists for Defendants' intentional, willful and reckless conduct; and

e. granting such further relief as the Court may deem appropriate.

**COUNT VI**

**TORTIOUS INTERFERENCE WITH PHYSICIAN-PATIENT RELATIONS (PPS v. GREEN SPRING, THE PLANS, MAGELLAN & HIGHMARK)**

105. Plaintiff incorporates by reference all allegations contained in paragraphs 1 through 97 above, as though set forth herein at length.

106. As discussed above, PPS-member psychiatrists have a professional relationship with their patient-subscribers based upon trust. This relationship also requires complete independence and integrity of communication, uninhibited

by inappropriate utilization management concerns, for the purposes of diagnosis and treatment.

107. Defendants have intentionally and without justification interfered with psychiatrist-patient treatment relations by contacting patient-subscribers directly for the purpose of influencing the course of treatment, and by appointing "case worker/friends" to patient-subscribers. On information and belief, these case workers influence patient-subscribers' willingness to seek treatment, interfere with the free disclosure of information from patient-subscribers to PPS-member psychiatrists, and interfere with PPS-member psychiatrists' ability to effectively diagnose illness and provide treatments.

108. Defendants have also intentionally and without justification interfered with the psychiatrist-patient relationship by: (1) failing to authorize medically necessary and appropriate mental health treatment; (2) failing to disclose their systemic efforts to reduce the level of care provided by PPS-member psychiatrists to patient-subscribers who participate in defendants' managed care plans; and (3) failing to create an adequate provider network; and (4) obstructing access by patient-subscribers to their psychiatrists by, among other means, inappropriately limiting care, failing to disclose relevant credentialling criteria to psychiatrists seeking to be credentialled, and failing to provide written notice of the denial of initial credentialling or recredentialling to applicants to the Provider Network.

109. Such actions constitute an impediment to the professional relationship between PPS-member psychiatrists and their patient-subscribers.

110. Defendants are liable for *per se* tortious conduct for violation of the standards established by the Quality Health Care Accountability and Protection Act.

111. Through these activities, Defendants intentionally, willfully and recklessly interfered with the psychiatrist-patient relationship between PPS-member psychiatrists and their patient-subscribers, to the detriment of both psychiatrist and patient.

WHEREFORE, Plaintiff Pennsylvania Psychiatric Society respectfully requests that the Court enter judgment:

a. enjoining Defendants from their practice of appointing case workers to individual patient-subscribers, and from using such case workers to interfere with physician-patient relations;

b. ordering Defendants to eliminate the administrative policies, procedures and practices that make it overly-burdensome to obtain authorization for medically necessary and appropriate care and that obstruct patient-subscribers' access to their PPS-member psychiatrists;

c. awarding damages to PPS-member psychiatrists for the loss of patients, loss of income related to the wrongful denial of medically necessary and appropriate care, increased administrative costs, and all other losses, plus interest and costs;

d. ordering Defendants to immediately disclose to Plaintiff and its members Defendants' qualifications and credentialling criteria in full;

e. awarding punitive damages to PPS-member psychiatrists for Defendants' intentional, willful and reckless conduct; and

f. granting such further relief as the Court may deem appropriate.

**COUNT VII**

**FRAUDULENT MISREPRESENTATION (PPS v. GREEN SPRING, THE PLANS, MAGELLAN & HIGHMARK)**

112. Plaintiff incorporates by reference all allegations contained in paragraphs 1 through 104 above, as though set forth herein at length.

113. Defendants falsely represented to patient-subscribers that the Plans would provide the following mental health benefits, among others: (1) a large, stable panel of psychiatrists to provide adequate mental health treatment for up to 20 outpatient visits per calendar year, and 30 inpatient days per 12-month period, and (2) for substance abuse treatment, up to 7 days of detoxification, and 30 days of rehabilitation for substance abuse care per year.

114. Defendants falsely represented to psychiatrists that they would receive the following benefits, among others, by joining the Provider Network: (1) they would be part of a Provider Panel; (2) they would be reimbursed at agreed-upon rates for mental health treatment; and (3) they would be able

to provide substance abuse and mental health treatment to their patient-subscribers within the applicable standard of care.

115. Instead, medically necessary and appropriate treatment within the managed care plans' benefit limits has been denied when such treatment would normally be provided in keeping with the applicable standard of care.

116. Additionally, Defendants routinely authorize treatment by psychologists, or other non-physician Providers, to reduce costs, when treatment by psychiatrists is clinically indicated.

117. Relying on these and other misrepresentations, to their detriment, patient-subscribers, including Ann Doe, agreed to participate in the managed care plans.

118. Relying on these and other misrepresentations, to their detriment, the PPS-member psychiatrists agreed to become Providers for the managed care plans.

119. Relying on these and other misrepresentations, to their detriment, patient-subscribers and PPS-member psychiatrists entered into doctor-patient relationships in an effort to provide and receive appropriate treatment for substance abuse and mental health problems.

WHEREFORE, Plaintiff Pennsylvania Psychiatric Society respectfully requests that the Court enter judgment:

a. ordering Defendants to eliminate the administrative policies, procedures and practices that make it excessively difficult or impossible to gain membership on Defendant Green Spring's Provider Panels;

b. ordering Defendants to eliminate the administrative policies, procedures and practices that make it overly-burdensome to obtain authorization and payment for the provision of medically necessary and appropriate care that falls within the coverage of the managed care plans;

c. enjoining Defendants' referral of patient-subscribers to psychologists or other non-physician Providers where psychiatric care is clinically indicated;

d. awarding damages to PPS-member psychiatrists for the loss of patients, loss of income related to the wrongful refusal to authorize medically necessary and appropriate care, increased administrative costs, and all other losses, plus interest and costs;

e. awarding punitive damages to PPS-member psychiatrists; and

f. granting such further relief as the Court may deem appropriate.

## COUNT VIII

## VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW (PPS V. GREEN SPRING, THE PLANS, MAGELLAN & HIGHMARK)

120. Plaintiff incorporates by reference all allegations contained in paragraphs 1 through 112 above, as though set forth herein at length.

121. Defendants have falsely advertised their managed care plans by providing for less than the amount of substance abuse and mental health services than were advertised.

122. Defendants represent that their services will meet applicable standards of behavioral health care. In reality, Defendants systematically refuse to authorize medically-necessary and appropriate treatment, with the result that patient-subscribers often receive behavioral health care that is below the applicable standard of care.

123. Defendants' actions have resulted in severe injuries to patient-subscribers, including Carol and Dorothy Doe.

124. Defendants' conduct is egregious and in direct violation of their obligations to patient-subscribers under their managed care plans.

WHEREFORE, Plaintiff Pennsylvania Psychiatric Society respectfully requests that the Court enter judgment:

a. awarding treble damages to patient-subscribers of the Plans for the natural and foreseeable consequences of

the Defendants' deceptive advertising and subsequent denial of medically necessary and appropriate care, and all other losses, plus interest and costs;

b. awarding counsel fees and costs to Plaintiff Pennsylvania Psychiatric Society; and

c. granting such further relief as the Court may deem appropriate.

Respectfully submitted,

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